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- |                          |                      |
|--------------------------|----------------------|
| A. Figure 1              | G. Figure 7C         |
| B. Figures 3A-3C         | H. Figures 7D and 7E |
| C. Figures 4A-4F         | I. Figures SA and SB |
| D. Figures SA-Se         | J. Figure 9          |
| E. Figure 6              | K. Figure 10         |
| F. Figures 7A, 7B and 7F |                      |

In the Office Action Applicant was instructed under 35 U.S.C. § 121, to provisionally elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claims is finally held allowable. The Examiner contends no current claims is generic. The applicant objects to this conclusion and notes that at least some of the claims may be retained in this application and ultimately be brought back into this case, depending on the scope of any claim ultimately deemed allowable.

4.

In order to provide a complete response to the species election, the applicant makes of record the provisional election to prosecute the invention of Species F, claims 1-3, 16-19 and 22-24 as determined during the telephone interview with the Examiner on September 17, 2002. This election is made with traverse as mentioned above. In particular, remaining claims 4-15, 20-21 and 25-32 are left pending for consideration of being brought back in this application upon an indication of allowability.

Finally, the applicant notes that the Examiner did not mention Figure 2. This figure represents either an alternative embodiment or a more detailed view of certain species. Applicant submits it is entitled to prosecute claims covering features shown in this figure.

#### **Claim Rejections – 35 USC §102**

6.

In the Office Action claims 1-3, 16-18, 23 and 24 were rejected under 35 U.S.C. § 102(b) as being anticipated by WO 95/31945 to Burmeister et al (Burmeister).

In response, claim 1 describes an endoluminal device having two elements. The first element is at least one superelastic section. The second element is at least one plastically

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deformable section. The superelastic section is further defined as a superelastic material extending in a first plurality of longitudinal stripes. The plastically deformable section is further defined as comprising a combination of a first layer of superelastic material and a second layer of plastically deformable material extending in a second plurality of longitudinal stripes. Support for amended claim 1 is found at page 13, beginning at line 27 and continuing to page 14 line 16. The amendments to claim 1 are consonant with the elections made in this application.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Burmeister does not contain each and every element as set forth in claim 1.

Burmeister describes a stent having a cylindrical or tubular body fabricated from a layered sheet which is rolled into a tube (page 7, lines 7-25). More specifically, at lines 16 and 17 of page 7 Burmeister describes a stent fabricated from a rolled, multi-layered sheet. Once rolled, the cylindrical body has an inner and an outer layer or alternatively, a plurality of layers. The layers are illustrated in FIG. 3 which shows that the layers are completely circular, and not stripes as recited in the instant claims. Burmeister does not teach a endoluminal device having a plastically deformable section having a first layer of superelastic material and a second layer of plastically deformable material extending in longitudinal stripes. The stent taught by Burmeister lacks longitudinal stripes of superelastic material and plastically deformable material as presently claimed.

Further more, Burmeister also describes a multibraided stent woven together with micro-cables in another embodiment (page 13, lines 3-13). Micro-cables are constructed of a plurality of intertwined wires of different alloys (page 13, lines 5-6 and FIGs. 14-16). These micro-cables are knitted and interwoven into links to form the overall tubular shape of a stent. A stent constructed by knitted microcables does not have a plastically deformable section with a first layer of superelastic material and a second layer of plastically deformable material extending in a plurality of longitudinal stripes, as can be appreciated by viewing FIGs. 14-16 of Burmeister.

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The Burmeister reference does not teach the elements of claim 1 of the present invention. Applicants submit that neither multi-layered sheets nor multi-braided micro-cables have superelastic sections consisting of a superelastic material extending in a first plurality of longitudinal stripes, and plastically deformable sections comprising a combination of a first layer of superelastic material and a second layer of plastically deformable material extending in longitudinal stripes as described in the instant claims. Accordingly, the applicant respectfully submits that Burmeister does not anticipate amended claim 1.

Because claims 2, 16-18, 23 and 29 depend from claim 1, the applicant submits these dependent claims are also allowable.

7.

In the Office Action claims 1-3, 16-19 and 22-24 were rejected under § 102(b) as being anticipated by US Patent No. 5,725,570 to Heath. More specifically, the Office Action directs the Applicant to FIGs. 2-3 and line 31 of column 4 through line 9 of column 5, and lines 31-49 of column 7 of the Heath reference.

Heath describes the use of an elastic filament knitted into a mesh cylinder (column 4, lines 32-33). More specifically, Heath describes a filament, formed by a wire-form member (column 4 lines 42-45). The wire-form member is constructed with an outer member concentrically disposed about a central core which extends along an axis. The core is bonded to and substantially enclosed by the outer member such that the core does not contact body tissue when positioned within the body during use (column 4 lines 55-59). The cored filament is then knitted with consecutive stitches to form the tubular shape of a stent.

The Heath reference does not teach the limitations as set forth in amended claim 1. The filaments of Heath are similar to the micro-cables of Burmeister. In light of the above discussion regarding the Burmeister micro-cables, the applicant submits that the Heath filaments disposed about a central core that is knitted into the tubular form of a stent does not meet the limitations as set forth in instant claim 1. As a result, the applicant respectfully submits that the Heath reference does not anticipate amended claim 1.

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The applicant believes amended claim 1 is now in condition for allowance. Because claims 2, 16-19 and 22-24 depend from claim 1, the applicant submits that these dependent claims are also now in condition for allowance.

#### **Claim Rejections – 35 USC §103**

9.

In the Office Action claim 19 was rejected under 35 U.S.C. § 103(a) as being obvious over Burmeister in view of U.S. Patent No. 6,217,607 to Alt. In response, Applicant respectfully points out that, because claim 19 depends from amended claim 1, which is believed to be allowable for the reasons above, claim 19 is also believed to be allowable.

In the Office Action Alt is cited as teaching the use of gold for a coating on a nitinol stent. However, the addition of Alt to Burmeister does nothing to address the failure of Burmeister alone to teach or suggest all of the elements of the instant claims. As a result the rejection is respectfully overcome.

#### **FORMALITIES**

If an extension of time is required to make this response timely and no separate petition is enclosed, Applicant hereby petitions for an extension of time sufficient to make the response timely. In the event that this response requires the payment of government fees and payment is not enclosed, please charge Deposit Account No. 22-0350.

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**CONCLUSION**

In view of the foregoing it is believed that the present application, with claims 1-2, 16-19 and 22-24 is in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,

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*Marked-Up Text*

**Marked Copy of the Amended Portions of the Specification:**

Page 1, before the header TECHNICAL FIELD please insert the following:

--CROSS-REFERENCE TO RELATED APPLICATIONS

This application is a continuation-in-part of U.S. Patent Application number 09362,261, filed October 31, 2000, now U.S. Patent number 6,485,507 the contents of which is incorporated herein in its entirety by reference.--

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*Marked-Up Text*

**Marked Copy of the Amended Claims**

Please cancel claim 3 without prejudice or disclaimer.

Please replace claims 1, 16 and 18 with the following amended claims:

1. (Amended) An endoluminal device comprising at least one superelastic section comprising a superelastic material extending in a first plurality of longitudinal stripes, and at least one plastically deformable section comprising a combination of a first layer of superelastic material and a second layer of plastically deformable material extending in a second plurality of longitudinal stripes.

16. (Amended) The device of claim 1, wherein [each] the second layer of the plastically deformable section [comprises a combination of superelastic material and plastically deformable material wherein said plastically deformable material]constrains the [superelastic material] first layer of the plastically deformable section.

18. (Amended) The device of claim 16, wherein the combination further comprises a [composite comprising] third layer of superelastic material, wherein the second layer of plastically deformable material is sandwiched between [inner and outer] the first and third layers of the superelastic material.